IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSE LUIS FUENTES	:	CIVIL ACTION
Plaintiff	:	No. 96-CV-3251
vs.	:	
BERKS COUNTY PRISON GUARDS	:	Philadelphia, Pennsylvania
Defendant	:	Friday, November 6, 1998
	:	JURY TRIAL – DAY IV

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE M. FAITH ANGELL
UNITED STATES MAGISTRATE COURT JUDGE

APPEARANCES:

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Charge of the Court

Correctional Officers Konemann, Kleeman and Donato, Sergeant Brown and Assistant Warden Werst, plaintiff asserts that the defendants violated his constitutional right now to be deprived his liberty without due process of law.

Let's go through each of these two civil rights claims one at a time, so I can tell you the specific elements which plaintiff is required to prove in order to establish that his constitutional rights were violated.

With regard to the excessive force claim, plaintiff alleges that Defendants Konemann and Kleeman beat him in his cell on December 28th, 1995 and that this application of physical force was excessive and unnecessary under the circumstances. Plaintiff seeks to hold Defendant Donato liable for observing this use of excessive force and for failing to intervene on his behalf.

Under the Fourteenth Amendment to the Constitution, an individual who has not yet been sentenced, has the right to be free from excessive force. A prison official may only use the amount of force necessary under the circumstances.

To succeed on his claim of excessive force, plaintiff must show by a preponderance of the evidence, that one or more of the defendants inflicted unnecessary and wanton pain and suffering. You must decide whether the force applied was in a good faith effort to maintain or restore discipline, in which case, you must find that the defendants did not use excessive

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force or whether the force applies was inspired by an unwise, excessive zeal, amounting to an abuse of official power, that shocks the conscience, in which case, you must find that one or more of the defendants did use excessive force.

In considering the degree of force, a reasonable prison official would use under the circumstances of this case, you may consider such factors as: The need for the application of

force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, the extent of the the threat to the safety of the staff and inmates as reasonably perceived by reason — responsive — officials and any efforts made to temper the severity of a forceful response.

In order to prevail on his claim of use of excessive force, the plaintiff must prove that he suffered some physical or psychological injury. Certain *de minimis* uses of physical force provided that — certain *de minimis* uses of physical force provided that the use is not of the sort repugnant to the conscience of mankind, do not rise to the level of a constitutional infringement. However, the plaintiff need not establish a significant or serious physical or psychological injury in order to establish excessive force. He must prove by a preponderance of the evidence, that he sustained more than *de minimis* physical or psychological injuries resulting from the use of a excessive force by one or more of the defendants.

With regard to the excessive force claim against

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Correctional Officer Donato, she is not alleged to have actually used force against the plaintiff. Plaintiff's excessive force claim against this defendant, rests on an alleged failure to intervene. In order to hold Correctional Officer Donato liable for excessive force, plaintiff must prove by a preponderance of the evidence that she was present in the D Unit, that she saw — D meaning Delta Unit — that she saw excessive force being applied against the plaintiff and that she did not attempt to stop it.

In his second civil rights claim, the plaintiff contents that Correctional Officer Konemann, Kleeman and Donato, Sergeant Brown and/or Assistant Warden Werst deprived him of his liberty without due process of law, when they caused the plaintiff to be confined in a restraint chair on December 28th, 1995, without first giving him a hearing.

Conversely, the defendants argue that the use of the restraint chair under the circumstances of this case, was related to a legitimate, non-punitive government interest of

controlling unruly inmates in the disciplinary unit and to modify their behavior where all other forms of discipline had been exhausted.

Under the due process clause of the Fourteenth Amendment, a person awaiting sentencing — as the plaintiff was on December 28th, 1995 — may not be punished. In this case, the parties have stipulated to the fact that the plaintiff was

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16. Right to Be Free from Use of Excessive and Unnecessary Force

The first constitutional right at issue in this case is the Fourteenth Amendment right to be free from the use of excessive force. Mr. Fuentes alleges that defendants Konemann and Kleeman beat him in his cell on December 28, 1995, and that this application of physical force was excessive and unnecessary under the circumstances. Mr. Fuentes also alleges that defendant Donato observed the use of excessive force against him and failed to intervene.

In order to prove that the defendants used excessive and unnecessary force, the plaintiff must prove by a preponderance of the evidence: (1) that the plaintiff suffered some harm, (2) that the harm resulted directly from the use of force that was clearly excessive in relation to any need for the use of force, and (3) that the excessiveness of the force was objectively unreasonable in light of the facts and circumstances at the time.

Some of the factors you may consider in determining whether the defendants used excessive force are: (1) the extent of the injury suffered, (2) the need for the use of force, (3) the relationship between that need and the amount of force used, (4) the threat reasonably perceived by the prison guards involved, and (5) any efforts made to temper the severity of the forceful response.

From *Wilson v. Williams*, 83 F.3d 870, 873-74 (7th Cir. 1996); *see also Bell v. Wolfish*, 441 U.S. 520, 538-39, 561 (1979); *Telfair v. Gilberg*, 868 F. Supp. 1396, 1412-13 (S.D. Ga. 1994), *aff'd* 87 F.3d 1330 (11th Cir. 1996); *Titran v. Ackman*, 893 F.2d 145, 147 (7th Cir. 1990).

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